

The California Integrated Waste Management Board (CIWMB) conditioned award of this Grant upon the return of this executed Agreement and its required materials within ninety (90) days from the date of mailing of the Agreement by the CIWMB. The Grantee may not receive this Grant if the Grantee fails to comply with this condition.

EXHIBIT A

TERMS AND CONDITIONS Fiscal Year 2002-2003

The following terms used in this Agreement have the meanings given to them below, unless the context clearly indicates otherwise.

- a. "CIWMB" means the California Integrated Waste Management Board.
- b. "Executive Director" means the Executive Director of the CIWMB or his or her designee.
- c. "State" means the State of California, including, but not limited to, the CIWMB and/or its designated officer.
- d. "Grant Manager" means the CIWMB staff person responsible for monitoring the grant.
- e. "Grantee" means the recipient of funds pursuant to this Agreement.

1. Air or Water Pollution Violation. Under the State laws, the Grantee shall not be: (a) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (b) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (c) finally determined to be in violation of provisions of federal law relating to air or water pollution.

2. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated into this Agreement is binding on any of the parties.

3. Americans with Disabilities Act. The Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. § 12101 et seq.)

4. Assignment, Successors, and Assigns.

- a. This Agreement may not be assigned by the Grantee, either in whole or in part, without the CIWMB's prior written consent.
- b. The provisions of this Agreement shall be binding upon and inure to the benefit of the CIWMB, the Grantee, and their respective successors and assigns.

5. Audit/Records Access. The Grantee agrees that the CIWMB, the Department of Finance, the Bureau of State Audits, or their designated representative(s) shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute, or audit, whichever is later. The Grantee agrees to allow the designated representative(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract or subcontract related to performance of this Agreement.

[You may find it helpful to share the Terms and Conditions and Procedures and Requirements with your finance department. Examples of audit documentation include, but are not limited to: expenditure ledger, payroll register entries and time sheets, personnel expenditure summary form, travel expense log, paid warrants, contracts, change orders, invoices, and/or canceled checks.]

6. Availability of Funds. The CIWMB's obligations under this Agreement are contingent upon and subject to the availability of funds appropriated for this grant.

7. Child Support Compliance Act. For any agreement in excess of \$100,000, the Grantee acknowledges that:

- a. the Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b. the Grantee, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

8. Communications. All communications from the Grantee to the CIWMB shall be directed to your Grant Manager. All notices required by this Agreement shall be given in writing and sent by prepaid mail, or by personal delivery or by FAX followed by prepaid mail or personal delivery to the Grant Manager at the following address:

Via standard mail: California Integrated Waste Management Board
Used Oil Recycling Program
Special Waste Division
P.O. Box 4025 MS-21
Sacramento, CA 95812-4025

Via courier/personal delivery: California Integrated Waste Management Board
Used Oil Recycling Program
Special Waste Division
1001 I Street
Sacramento, CA 95814

Via FAX: (916) 319-7230

Via E-mail: jsifuent@ciwmb.ca.gov

9. Compliance. The Grantee shall comply fully with all applicable federal, state, and local laws, ordinances, regulations, and permits. The Grantee shall provide evidence, upon request, that all local, state, and/or federal permits, licenses, registrations, and approvals have been secured for the purposes for which grant funds are to be expended. The Grantee shall maintain compliance with such requirements throughout the grant period. The Grantee shall ensure that the requirements of the California Environmental Quality Act are met for any approvals or other requirements necessary to carry out the terms of this Agreement. Any deviation from the requirements of this section shall result in non-payment of grant funds.

10. Confidentiality/Public Records. The Grantee and the CIWMB acknowledge that each party may come into possession of information and/or data that may be deemed confidential or proprietary by the person or organization furnishing the information or data. Such information or data may be subject to disclosure under the California Public Records Act, Government Code ("GC") Section 6250 et seq. The CIWMB agrees not to disclose such information or data furnished by the Grantee and to maintain such information or data as confidential when so designated by the Grantee in writing at the time it is furnished to the CIWMB, but only to the extent that such information or data is exempt from disclosure under the California Public Records Act.

11. Conflict of Interest. The Grantee needs to be aware of the following provisions regarding current or former state employees. If the Grantee has any questions on the status of any person rendering services or involved with this Agreement, the CIWMB must be contacted immediately for clarification.

Current State Employees (Public Contracts Code (PCC) § 10410):

- a. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.
- b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC § 10411):

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve month period prior to his or her leaving state service.

If the Grantee violates any provisions of above paragraphs, such action by the Grantee shall render this Agreement void. (PCC § 10420)

12. Contractors/Subcontractors. The Grantee will be entitled to make use of its own staff and such contractors and subcontractors as are mutually acceptable to the Grantee and the CIWMB. Any change in contractors or subcontractors must be mutually acceptable to the parties. Immediately upon termination of any such (sub)contract, the Grantee shall notify the Grant Manager.

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the CIWMB and any contractors or subcontractors of Grantee, and no agreement with contractors or subcontractors shall relieve the Grantee of its responsibilities and obligations hereunder. The Grantee agrees to be as fully responsible to the CIWMB for the acts and omissions of its contractors and subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Grantee. The Grantee's obligation to pay its contractors and subcontractors is an independent obligation from the CIWMB's obligation to make payments to the Grantee. As a result, the CIWMB shall have no obligation to pay or to enforce the payment of any moneys to any contractor or subcontractor.

13. Controlling Law. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

14. Copyrights and Trademarks.

- a. The Grantee assigns to the State any and all rights, title, and interests to any copyrightable material or trademarkable material created or developed in whole or in any part as a result of this Agreement, including the right to register for copyright or trademark of such materials. Grantee shall require that its contractors and subcontractors agree that all such materials shall be the property of the State. Upon written request by the Grantee, the CIWMB may give, at the Executive Director's sole discretion, written consent to the Grantee to retain all or any part of the ownership of these rights.
- b. The State through the CIWMB hereby grants to the Grantee a royalty-free, nonexclusive, nontransferable license to reproduce, translate, and distribute copies of the materials produced pursuant this Agreement, for nonprofit purposes, and to have or permit others to do so on the Grantee's behalf.

15. Corporation Qualified Do Business in California. When work under this Agreement is to be performed in California by a corporation, the corporation shall be in good standing and currently qualified to do business in the State. "Doing business" is defined in Revenue and Taxation Code Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

16. Discretionary Termination. The Executive Director shall have the right to terminate this Agreement at his or her sole discretion at any time upon thirty (30) days written notice to the Grantee. Within forty-five (45) days of receipt of written notice, Grantee is required to: a) submit a final written report describing all work performed by the Grantee; b) submit an accounting of all grant funds expended up to and including the date of termination; and, c) reimburse the CIWMB for any unspent funds.

17. Disputes. Unless otherwise instructed by the Grant Manager, the Grantee shall continue with its responsibilities under this Agreement during any dispute.

18. Drug-Free Workplace Certification.

The person signing this Agreement on behalf of the Grantee certifies under penalty of perjury, that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (GC § 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions that will be taken against employees for violations.
- (2) Establish a drug-free awareness program to inform employees about all of the following: (a) the dangers of drug abuse in the workplace; (b) the Grantee's policy of maintaining a drug-free workplace; (c) any available counseling, rehabilitation, and employee assistance programs; and (d) penalties that may be imposed upon employees for drug abuse violations.
- (3) Require that each employee who works on the grant: (a) receive a copy of the drug-free policy statement of the Grantee; and (b) agrees to abide by the terms of such statement as a condition of employment on the grant.

19. Entire Agreement. This Agreement supersedes all prior agreements, oral or written, made with respect to the subject hereof and, together with all attachments hereto, contains the entire Agreement of the parties.

20. Environmental Justice. In the performance of this Agreement, Grantee shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, culture, and income levels, including minority populations and low-income populations of the State.

21. Failure to Perform as Required by This Agreement. The State will benefit from the Grantee's full compliance with the terms of this Agreement only by the Grantee's (a) investigation and application of technologies, processes, and devices which support reduction, reuse, and/or recycling of wastes; or (b) cleanup of the environment; or (c) enforcement of solid waste statutes and regulations, as applicable.

Therefore, Grantee shall be in compliance with this Agreement only if the work it performs results in (a) information, a process, usable data or a partial product which can be used to aid in reduction, reuse, and/or recycling of waste; or (b) the cleanup of the environment; or (c) the enforcement of solid waste statutes and regulations, as applicable.

22. Force Majeure. Neither the CIWMB nor the Grantee, its contractors, vendors, or subcontractors, if any, shall be responsible hereunder for any delay, default, or nonperformance of this Agreement, to the extent that such delay, default, or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, sabotage, flood, or other contingencies unforeseen by the CIWMB or the Grantee, its contractors, vendors, or subcontractors, and beyond the reasonable control of such party.

23. Forfeit of Grant Funds/Repayment of Funds Improperly Expended. If grant funds are not expended, or have not been expended, in accordance with this Agreement, or if real or personal property acquired with grant funds is not being used, or has not been used, for grant purposes in accordance with this Agreement, the Executive Director, at his or her sole discretion, may take appropriate action under this Agreement, at law or in equity, including requiring the Grantee to forfeit the unexpended portion of the grant funds and/or to repay to the CIWMB any funds improperly expended.

24. Grantee's Indemnification and Defense of the State. The Grantee agrees to indemnify, defend, and save harmless the State, its officials, officers, agents, employees, and servants from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Grantee in the performance of this Agreement.

25. Grantee's Name Change. A written amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change, the CIWMB will process the amendment. Payment of Payment Requests presented with a new name cannot be paid prior to approval of the amendment.

26. Independent Capacity. Grantee, and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State.

27. No Agency Relationship Created. The Grantee and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the CIWMB.

28. Ownership of Drawings, Plans, and Specifications. The State shall have separate and independent ownership of all drawings, design plans, specifications, notebooks, tracings, photographs, negatives, reports, findings, recommendations, data, software, and memoranda of every description or any part thereof, paid for in whole or in any part with grant funds. Copies thereof shall be delivered to the CIWMB upon request. Grantee agrees, and shall require that its contractors, subcontractors, and vendors agree that the State shall have the full right to use said copies in any manner when and where it may determine without any claim to additional compensation.

29. Patents. The Grantee assigns to the State all rights, title, and interest in and to each invention or discovery that may be capable of being patented, that is conceived of or first actually reduced to practice in the course of or under this Agreement, or with the use of any grant funds. Upon written request by the Grantee, the CIWMB may give, at the Executive Director's sole discretion, written consent to the Grantee to retain all or any part of the ownership of these rights.

30. Payment.

- a. Upon execution of this Agreement by both parties, the CIWMB may advance grant funds to Grantee provided that Grantee, in the sole discretion of the Executive Director, has satisfactorily complied with the applicable requirements contained in this Grant Agreement Package. The CIWMB may elect not to advance payment if Grantee has not satisfactorily complied with the applicable terms and conditions of previous grants.
- b. All expenditures must be directly related to the establishment, maintenance, or enhancement of local or regional used oil collection programs.
- c. Upon receipt of grant funds, the Grantee shall deposit and maintain until expended all grant funds in an interest bearing account in a fully insured financial institution. All interest accrued and received from this account must be used for eligible expenses related to the performance of this Agreement. Interest funds must be accounted for in all grant reports. All unused interest funds must be returned to the CIWMB at the end of the grant term.

31. Real and Personal Property Acquired with Grant Funds.

- a. All real and personal property, including equipment and supplies, acquired with grant funds shall be used by the Grantee only for the purposes for which the CIWMB approved their acquisition for so long as such property is needed for such purposes, regardless of whether the Grantee continues to receive grant funds from the CIWMB for such purposes.
- b. Subject to the obligations and conditions set forth in this section, title to all real and personal property acquired with grant funds, including all equipment and supplies, shall vest upon acquisition in the Grantee.

32. Recycling Certification. For the products, materials, goods, and supplies purchased with grant funds and used in the performance of this Agreement, the Grantee shall certify under penalty of perjury the minimum, if not exact, percentage of recycled content, both secondary waste and post-consumer waste, as defined in PCC §§ 12161, 12162, 12181, 12182, and 12200, as applicable. This certification shall be provided to the CIWMB on the Recycled Content Certification Form available at: www.CIWMB.ca.gov/Contracts/Forms/CIWMB74.pdf.

33. Remedies. Unless otherwise expressly provided herein, the rights and remedies hereunder are in addition to, and not in limitation of, other rights and remedies under this Agreement, at law or in equity, and exercise of one right or remedy shall not be deemed a waiver of any other right or remedy.

34. Resolution. A county, city, district, or other local public body must provide the CIWMB with a copy of a resolution, order, motion, or ordinance of the local governing body, which by law has authority to enter into an agreement, authorizing execution of this Agreement and designating the job title of the individual authorized to sign on behalf of the local public body.

35. Severability. If any provisions of this Agreement are found to be unlawful or unenforceable, such provisions will be voided and severed from this Agreement without affecting any other provision of this Agreement. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.

36. Site Access. The Grantee shall allow the State to inspect sites at which grant funds are expended and related work being performed at any time during the performance of the work and for thirty (30) days after completion of the work.

37. Stop Work Notice. Immediately upon receipt of a written notice from the Grant Manager to stop work, the Grantee shall cease all work under this Agreement.

38. Termination for Cause. The CIWMB may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the CIWMB may proceed with the work in any manner deemed proper by the CIWMB. All costs to the CIWMB shall be deducted from any sum due the Grantee under this Agreement.

39. Time Is of the Essence. Time is of the essence of this Agreement.

40. Union Organizing. By signing this Agreement, the Grantee hereby acknowledges the applicability of GC §§ 16645 through 16649 to this Agreement and hereby certifies that:

- a. No grant funds disbursed by this grant will be used to assist, promote, or deter union organizing.
- b. If the Grantee makes expenditures to assist, promote, or deter union organizing, the Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

41. Venue. All proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be held in Sacramento County, California. The parties hereby waive any right to any other venue.

42. Waiver of Claims and Recourse Against the State. The Grantee agrees to waive all claims and recourse against the State, its officials, officers, agents, employees, and servants, including, but not limited to, the right to contribution for loss or damage to persons or property arising out of, resulting from, or in any way connected with or incident to this Agreement. This waiver extends to any loss incurred attributable to any activity undertaken or omitted pursuant to this Agreement or any product, structure, or condition created pursuant to, or as a result of, this Agreement.

43. Work Projects/Publicity and Acknowledgement. The Grantee shall acknowledge the CIWMB's support each time projects funded, in whole or in part, by this Agreement are publicized in any news media, brochures, or other type of promotional material.

44. Waste Reduction-Recycled-Content Product Purchasing. In the performance of this Agreement, the Grantee shall purchase recycled-content products, as defined by the State Agency Buy Recycled Campaign (SABRC) minimum recycled-content requirements (www.ciwmb.ca.gov/BuyRecycled/StateAgency/Buying) with grant funds and practice other waste reduction measures, whenever feasible.

[For assistance in locating recycled-content products, please contact your CIWMB Grant Manager.]